

NOTES AND COMMENTS

CORRESPONDENCE

The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters should be published and to edit any letters printed.

TO THE EDITOR IN CHIEF:

In the April issue of the *Journal* (pp. 318–41), three views were set out concerning payment of compensation for the accidental downing by missiles fired from a U.S. Navy ship, the *Vincennes*, of an Iran Air civilian airliner. The State Department's Legal Adviser, Mr. Sofaer, was anxious to avoid any suggestion of liability by the United States, but proposed an *ex gratia* payment, on a basis "essentially within the discretion of the state offering such payments," i.e., the United States (p. 323). Professor Maier, also insistent that there was no legal liability, suggested the level determined by the Warsaw Convention, as modified by the Montreal Agreement of 1966 with respect to transportation to or from the United States, which would amount to \$75,000 per passenger. My view was that the United States is responsible at international law regardless of fault, but I did not suggest any particular sum that would satisfy its legal responsibility.

As described elsewhere in this edition of the *Journal* (p. 561), shortly after the U.S.S. *Stark* was hit—also accidentally, so far as we know—by two missiles fired from an Iraqi Air Force Mirage aircraft with the loss of 37 American lives, the United States demanded from Iraq "full compensation in accordance with international law" for the deaths and personal injuries sustained by the crew of the American warship. Having, as it said it would do, evaluated the losses, the State Department presented a bill to the Government of Iraq for \$29.6 million, or \$800,000 per person. Following negotiations between the two Governments, they settled for \$27,350,374, not much less than the original amount sought. That sum comes to \$739,199.29 per person, about ten times the amount being discussed as payment for victims of the Iran Air disaster. Of course, American standards of compensation for personal injury or wrongful death are much higher than those prevailing in any other country. On the other hand, we have generally thought that members of the U.S. Armed Forces are adequately protected by the statutory provisions for injury or death while in service.¹

I am pleased that substantial payments are being made to the families of the dead crew members of the U.S.S. *Stark*. I am ashamed that nothing has yet been paid to the families of the passengers and crew of Iran Air Flight 653, and that if anything is paid, it is likely to be, per victim, so much less. At least one might hope that assertions about what international law requires might be made with somewhat more modesty and consistency.

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¹ *Feres v. United States*, 340 U.S. 135 (1950); see also *United States v. Shearer*, 473 U.S. 52 (1985); *United States v. Stanley*, 107 S.Ct. 3054 (1987).